

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PATRICIA I. CALLINS,

§

Plaintiff,

§

V.

No. 3:17-cv-1975-C-BN

SWIFT TRANSPORTATION CO. OF
ARIZONA, LLC,

§

Defendant.

§

ORDER DENYING WITHOUT PREJUDICE MOTION TO COMPEL

This employment discrimination action filed by a plaintiff proceeding *pro se* has been referred to the undersigned United States magistrate judge for case management under 28 U.S.C. § 636(b) and a standing order of reference from Senior United States District Judge Sam R. Cummings.

Plaintiff Patricia I. Callins has filed a Motion to Compel Discovery and Protective Order of Discovery [Dkt. No. 52], seeking discovery (a surveillance tape), under Federal Rule of Civil Procedure 26, from Walmart, a non-party to this litigation.

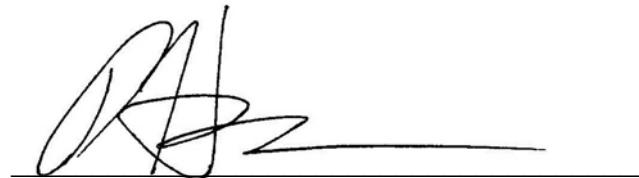
“Federal Rule of Civil Procedure 45 ‘explicitly contemplates the use of subpoenas in relation to non-parties’ and governs subpoenas served on a third party, such as [Walmart], as well as motions to quash or modify or to compel compliance with such a subpoena.” *Am. Fed’n of Musicians of the United States & Canada v. Skodam Films, LLC*, 313 F.R.D. 39, 42 (N.D. Tex. 2015) (quoting *Isenberg v. Chase Bank USA, N.A.*, 661 F. Supp. 2d 627, 629 (N.D. Tex. 2009)). Said another way, “[t]he only appropriate

means to compel a non-party, such as [Walmart], to[, for example,] produce documents is to serve them a subpoena as set forth in Rule 45.” *In re Air Crash at Dallas/Fort Worth Airport on Aug. 2, 1985*, 117 F.R.D. 392, 393 (N.D. Tex. 1987); *see also Thompson v. Gonzalez*, No. 1:15-cv-301-LJO-EPG, 2016 WL 5404436, at *4 & n.7 (E.D. Cal. Sept. 27, 2016) (“[B]ecause Rule 45 is the only discovery-related Rule that pertains to non-parties, numerous courts have held explicitly that a Rule 45 subpoena is required to obtain discovery from a non-party.” (collecting cases)).

For these reasons, Ms. Collins’s Rule 26 motion to compel directed at Walmart is DENIED without prejudice to her serving a subpoena on this non-party under Rule 45 in compliance with all the requirements of that rule.

SO ORDERED.

DATED: July 17, 2018



DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE